

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

CHRISTINA FRANCIS;
PATRICK DAVIS, MANDEE PINGEL AND DAVIS PINGEL & ASSOCIATES,
v.

Appellant
Appellants

DANIEL WIELAND,

Respondent

DOCKET NUMBER WD79497 and WD79962

DATE: February 28, 2017

Appeal From:

Circuit Court of Clay County, MO
The Honorable David Paul Chamberlain, Judge

Appellate Judges:

Division Four
Mark D. Pfeiffer, Chief Judge Presiding, Thomas H. Newton, and Lisa White Hardwick, JJ.

Attorneys:

Patrick Davis, Kansas City, MO	Counsel for Appellants
Mandee Pingel, Kansas City, MO	Co-Counsel for Appellants
Alan Mandel, St. Louis, MO	Co-Counsel for Appellants
Michael Sudekum, St. Louis, MO	Co-Counsel for Appellants

Attorneys:

Alexandra Hutchings, Liberty, MO	Counsel for Respondent
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**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

CHRISTINA FRANCIS, Appellant; PATRICK DAVIS, MANDEE PINGEL AND
DAVIS PINGEL & ASSOCIATES, Appellants, v. DANIEL WIELAND, Respondent

WD79497 and WD79962

Clay County

Before Division Four Judges: Pfeiffer, C.J., Newton, and Hardwick, JJ.

Wieland, Father, filed a motion to modify a child-custody order entered in St. Louis County in 2011, seeking sole physical and sole legal custody of his son who was five years old. The child's Mother, Francis, who had sole legal custody, had moved with the child to Liberty, Missouri, so the proceedings were transferred to the Clay County circuit court. Her current counsel entered their appearance on her behalf in August 2014, and Mother subsequently filed a counter-motion to modify seeking sole physical and sole legal custody. Following months of contentious pre-trial proceedings, generating thousands of pages of filed documents, involving a number of mental-health professionals, and consuming five days of trial, the circuit court determined that circumstances had sufficiently changed to warrant modifying the child-custody order and awarding joint legal and joint physical custody with the child's residence to remain in Mother's home. According to the court, as borne out by the record, Mother's approach to the child's mental-health care was no longer appropriate given his significant improvement, and her choice of his therapist had resulted in the child regularly missing school. While the court acknowledged that Mother's and Father's relationship was toxic, it found that the child was emotionally attached to both and to their respective families and that Father appeared to understand that cooperation moving forward was in the child's best interest. By fashioning the modification order in a way that removed a number of flashpoints, particularly regarding the child's mental and physical health care, the court decreased the likelihood that Mother and Father would have to return to court, a circumstance that continued to cause the child anxiety. The court further found that financial circumstances had not changed to an extent warranting a departure from the \$916 monthly child-support awarded to Mother in 2011. The circuit court also entered a \$75,000 sanctions order against Mother's attorneys and their firm. The order both granted Father's sanctions motion and was a reflection of the court's inherent authority to impose sanctions for bad-faith conduct. No hearing preceded the sanctions award, although some of trial testimony had addressed issues raised in the sanctions motion.

WD79497 AFFIRMED. WD79962 REVERSED AND REMANDED.

Division Four holds:

Mother's first point challenges the circuit court's exercise of discretion in ordering joint legal custody and its application of the law in delegating legal authority to psychologists and doctors. The record supports the circuit court's finding of changed circumstances justifying the change from Mother's sole legal custody to joint legal custody. The court adequately explained its reasoning and properly found that Father had agreed to cooperate as to future therapeutic care for the child. Designating professionals to provide the child's mental and physical health care or to refer Mother and Father to substitute professionals when needed did not delegate judicial

authority because such designation did not involve the court's statutory authority to determine custody. This point is denied.

Mother's second point relates to the circuit court's alleged failure to issue findings of fact and conclusions of law under certain rules and statutory sections. Because she either fails to relate the specific rule purportedly violated to the shortcoming at issue or because the court complied in every respect with statutory requirements in making its custody award, setting forth the parenting plan, and awarding support, we deny this point.

Mother's third point asserts that the circuit court abused its discretion and erroneously declared and applied the law in failing to hold the guardian ad litem accountable for discharging her duties. Mother failed to timely file a motion to disqualify the guardian ad litem and did not raise the issue of her discharge before judgment was entered, thus it has not been preserved for our review. Even if the issue were preserved and of merit, the guardian ad litem's disqualification does not require starting the litigation over with a new guardian ad litem.

Mother's fourth point raises issues of circuit court bias requiring either recusal or a hearing before an independent judge to determine if recusal was required. She first raised the issue in a motion for mistrial and to reconsider or amend the judgment after the circuit court entered its written judgment. While bias may be raised at any time, the specific allegations of bias do not rise to a level that would have required the court's recusal, as they consisted of expressions of impatience or anger that the law considers immune where, as here, they simply reflect ordinary efforts at courtroom administration. We also find that any ex parte communications of Father's counsel or the guardian ad litem with the court concerned the administration of the case and did not involve extended interaction over case merits. Nor is there any evidence that the court made its custody modification decision on the basis of anything other than the record. This point is denied.

Accordingly, we affirm the circuit court's child-custody modification judgment.

In their appeal of the sanctions judgment, Mother's counsel contend that their due process rights were violated, sanctions were not justified in the absence of bad faith, the sanction imposed was punitive, and the circuit court failed to afford them certain procedural protections. The circuit court based its sanctions judgment on both Father's motion for sanctions, involving claims of inappropriate contact with their expert witness, and its inherent authority to impose sanctions for bad-faith conduct. Before trial began, the court deferred ruling on the sanctions motion and indicated that a hearing could be held to consider the motion at a later time. That hearing was not held, so we reverse the sanctions judgment and remand for the court to provide counsel with notice and to conduct a hearing limited to the testimony of a psychologist specifically named in post-judgment motions, if that testimony does not duplicate his post-judgment affidavit, and to any other witness or evidence the court and parties agree would clarify the issues. We do not decide any of the specific factual or legal issues otherwise raised in counsel's appeal, and allow the court to consider all of the proceedings to date, and the filings, motions, actions by counsel in open court, and evidence adduced in this proceeding to date, and prior proceedings in reaching its decision on sanctions.

Accordingly, we reverse the circuit court's sanctions judgment and return the case to it for further proceedings.

Opinion by Thomas H. Newton, Judge

February 28, 2017

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